

REMARKS

Claims 1, 2, 5-9 and 38-70 were previously pending. Following the entry of the accompanying amendment, Claims 38, 39, 41, 44, 45, 50 and 71-90 will be pending. Claims 71-90 are newly added. Claims 38, 41, 44, 45 and 50 are currently amended. Claim 39 was previously presented. Claims 1, 2, 5-9, 40, 42-43, 46-49 and 51-70 are hereby cancelled without prejudice to or disclaimer of the underlying subject matter. Support for foregoing amendment can be found throughout the Specification and claims as originally filed, for example at page 5, lines 2-4, at page 9, lines 25-28, at page 9, line 29 to page 10 line 2, and at examples 1-5.

Applicants appreciate the discussion with the Examiner on December 19, 2008.

Applicants submit that the current pending claims are consistent with the discussion. No new matter enters by way of the present amendment. Moreover, such amendments do not require further search or consideration, remove issues for appeal, and are believed to place the claims in condition for allowance. As such, entry of the present amendment is respectfully requested.

I. RESPONSE TO REJECTIONS AND OBJECTIONS**A. Claim Rejections - 35 USC § 112, first paragraph - Written Description**

Claims 1, 2, 5-9, 46-48 and 51-70 stand rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner states that “[t]he rejection is repeated for the reasons of record as set forth on pages 2-5 of the Office Action mailed January 23, 2008, as applied to claims 1, 2, 5-9, 46-48 and 51-56.” Final Office Action mailed September 4, 2008 at page 2, lines 14-16.

Applicants thank the Examiner for the acknowledgment that “[a] person skilled in the art would, after reading the present specification, would understand that Appellant had possession of lettuce breeding lines PSR 4569, PSR 4570, PSR 6425, PSR 6595 and PSR 6032.” Final Office Action at page 3, lines 4-7. Though Applicants disagree with Examiner’s allegation that Claims 1, 2, 5-9, 46-48 and 51-70 fail to comply with the written description requirement of 35 USC § 112, to facilitate the prosecution and without prejudice or disclaimer to the underlying subject matter, Applicants have cancelled Claims 1, 2, 5-9, 46-48 and 51-70. As such, the Applicants submit that the rejection has been rendered moot.

B. Claim Rejections - 35 USC § 112, first paragraph - Enablement

Claims 1, 2, 5-9, 46-48 and 51-70 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. The Examiner states that “[t]he rejection is repeated for the reasons of record as set forth on pages 5-8 of the Office Action mailed January 23, 2008 as applied to claims 1, 2, 5-9, 46-48 and 51-56.” Final Office Action mailed September 9, 2008 at page 6 lines 19-20 to page 7, line 1.

Applicants thank the Examiner for the acknowledgment that the specification is “enabling for lettuce breeding lines PSR 4569, PSR 4570, PSR 6425, PSR 6595 and PSR 6032.” Final Office Action at page 6, lines 13-14. Though Applicants disagree with Examiner’s allegation that Claims 1, 2, 5-9, 46-48 and 51-70 fail to comply with the enablement requirement of 35 USC § 112, to facilitate the prosecution and without prejudice or disclaimer to the underlying subject matter, Applicants have cancelled Claims 1, 2, 5-9, 46-48 and 51-70. As such, the Applicants submit that the rejection has been rendered moot.

C. Claim Rejections - 35 USC § 103

Claims 1, 2, 5-7, 46-48 and 51-56 stand rejected and new claims 57-70 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Miltz (US Patent No. 5,220,113, June 15, 1993), in view of Tillge (Seed Sci. & Technol. 12: 919-933, 1984), further in view of Bassett (J. Amer. Soc. Hort. Sci. 100(2): 104-105, 1975). The Examiner states that “[t]he rejection is repeated for the reasons of record as set forth on pages 9-11 of the Office Action mailed January 23, 2008, as applied to claims 1, 2, 5-7, 46-48 and 51 -56.” Final Office Action at page 10, lines 4-6.

Though Applicants disagree with Examiner’s allegation that Claims 1, 2, 5-9, 46-48 and 51-70 are unpatentable over Miltz in view of Tillge, further in view of Basset, to facilitate the prosecution and without prejudice or disclaimer to the underlying subject matter, Applicants have cancelled Claims 1, 2, 5-9, 46-48 and 51-70. As such, the Applicants submit that the rejection has been rendered moot.

D. Claim Objections - dependence on rejected claims

Claims 38-45, 49 and 50 are objected to as being depended upon rejected claims.

Applicants submit that the claims as amended following entry of the current amendment no longer read on rejected claims and respectfully request withdrawal of the objection.

II. CONCLUSION

In view of the above, each of the presently pending claims is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding objection and rejections to the claims, and to pass this application to issue. The Examiner is respectfully requested to contact Applicants' undersigned representative at 202-942-5186 to address any unresolved issues remaining in this application.

Respectfully submitted,



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